

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5660 of 2007()

CP.97/2006 of J.M.F.C.-I,KOTTARAKKARA
CRIME NO.892/2004 OF KOTTARAKARA POLICE STATION
.....

: PETITIONERS/ACCUSED NOS.1,5,7,8 AND 10 TO 17:

1. SATEESH, S/O. KOCHUKUNJU,
CHARUVILA VEEDU, UMMANOOR, KOTTARAKARA.
2. SAMKUTTY, S/O. DANIEL,
KOOLAZHIKATHU VEEDU, UMMANOOR, KOTTARAKARA.
3. MURUKESHAN, S/O. MADHU,
MUKRUGALAYAM, UMMANOOR, KOTTARAKARA.
4. SAJITH, S/O. RAGHAVAN,
POIKAVILAVEEDU, UMMANOOR, KOTTARAKARA.
5. RAJU, S/O. GEORGE,
VADAKKEKARA VEEDU, UMMANOOR, KOTTARAKARA.
6. SUNNY, S/O. GEORGE,
VADAKKEKARA VEEDU, UMMANOOR, KOTTARAKARA.
7. SURESH, S/O. KRISHNAN KUTTY,
KOCHUVILAVEEDU, UMMANOOR, KOTTARAKARA.
8. PRASAD, S/O. PAPPAN,
PLAVILA VEEDU, UMMANOOR, KOTTARAKARA.
9. MOHANAN, S/O. YOHANAN,
PLAVILA VEEDU, UMMANOOR, KOTTARAKARA.
10. GEORGEKUTTY, S/O. LUKOSE,
PLAVILA VEEDU, UMMANOOR, KOTTARAKARA.
11. SUESH BABU, S/O. KARTHIKEYAN,
KARIMARTHINMOOTTIL, UMMANOOR, KOTTARAKARA.

12. RAJESH, S/O. RAJAN,
THADATHI THAZHATHIL, UMMANOOR, KOTTARAKARA.

BY ADV. SRI.PREMCHAND R.NAIR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
KOTTARAKARA POLICE STATION, REPRESENTED THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.5660 of 2007

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations for offences punishable, inter alia, under Section 308 r/w 149 I.P.C. Investigation is now complete. Final report has already been filed. Committal proceedings has been registered. The petitioners are now prepared to appear before the learned Magistrate and seek regular bail. They apprehend that their application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is hence prayed that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

2. The application is opposed. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable or inherent jurisdictions under Sections 438 or 482 Cr.P.C. They may be directed to appear before the learned Magistrate and seek regular bail, it is prayed.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non

bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-

